

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters Civil
Citation Issued to
Gregory Thomas Amluxen;
Citation No. 178017

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held by telephone on January 3, 2013, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on December 5, 2012.

Appearances: Conservation Officer Jackie Glaser, on behalf of the Department of Natural Resources; Gregory Thomas Amluxen, on his own behalf and without counsel.

The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The parties were placed under oath, and their testimony was taken. The hearing record closed at the end of the telephone hearing on January 3, 2013.

STATEMENT OF THE ISSUES

Did Mr. Amluxen violate Minn. Stat. § 84D.10, subd. 4(b),¹ by transporting a boat without the drain plug removed or opened?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

SUMMARY OF THE FACTS

On October 15, 2012, Officer Glaser was on duty at the Grey's Bay public access to Lake Minnetonka. It is a large, heavily used access.

At approximately 1:00 p.m., Officer Glaser observed a large boat enter the access of County Road 101. As the boat went past her, Officer Glaser noticed the plug was in the back of the boat.

¹ Minnesota Statutes are cited to the 2012 Edition.

Officer Glaser identified Mr. Amluxen by his driver's license. Mr. Amluxen told her the boat was checked by water craft inspectors the previous day and because it had been checked he thought it was permissible to pull the boat with the drain plug in.

Officer Glaser and Mr. Amluxen removed the plug and there was no water in the boat. Officer Glaser issued Mr. Amluxen a citation.

Minnesota Statutes § 84D.10, subd. 4(b) states: "Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment."

Mr. Amluxen does not dispute the plug was in the boat, nor does he dispute any of Officer Glaser's testimony. Mr. Amluxen testified on October 14, 2012, he was helping a friend remove his boat from the lake for the winter. The public access was extremely busy that day. They removed the plug in front of the water craft inspector and drained the boat. The water craft inspector said they were good to go. Mr. Amluxen and his friend noticed, however, the bow of the boat was not far enough up on the bunk of the trailer. Mr. Amluxen told his friend he would take the boat back on October 15th when it was not so busy and re-float the boat to get it properly positioned on the trailer. Mr. Amluxen only lives six blocks from Grey's Bay public access. On October 15, he put the plug back in the boat at his home and drove it to the access where he was confronted by Officer Glaser.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSION

Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation. Mr. Amluxen filed a timely appeal and request for hearing.

Mr. Amluxen violated Minn. Stat. § 84D.10, subd. 4(b), on October 15, 2012, by transporting a boat without removing or opening the drain plug.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the civil citation issued to Gregory Thomas Amluxen be **AFFIRMED**.

Dated: January 22, 2013

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may within those five days comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

Mr. Amluxen does not dispute that the drain plug was in the boat when he pulled it onto to the boat launch. However, he does not believe the citation was appropriate.

Mr. Amluxen makes three arguments. First, the citation was inappropriate because the boat passed inspection the day before. Second, the citation was not properly issued because he only drove the boat six blocks. And third, he asserts the word “transporting” in the statute is vague.

Mr. Amluxen thought, under the circumstances, driving the boat back to the access to reposition it on the trailer was allowed. He believes a warning would have been more appropriate.

All of the arguments fail. There is no way a Conservation Officer could know whether a boat passed inspection the day before and had not been in the water since. And, the statute is unambiguous. A drain plug must be removed from a boat while it is being transported. “Transport” is defined to mean ‘to transfer or convey from one place to another.’² Mr. Amluxen “transported” the boat from his home to Grey’s Bay public access. There is no exception in the statute for only transporting the boat six blocks.

The citation was properly issued. It is, however, within the discretion of the Commissioner to affirm the citation or to reduce the citation to a warning.

J.E.L.

² Merriam-Webster on-line Dictionary.